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CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

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7 UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF DELAWARE

9 In re:
10
11 W.R. GRACE & CO., et al.,
12 Reorganized Debtors.

Chapter 11
Case No. 01-01139 (AMC)
(Jointly Administered)
The Honorable Ashely M. Chan

Hearing Date: August 26, 2021, at 10:00 a.m.
Objection Deadline: July 27, 2021, at 4:00 p.m.

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15 **RESPONSE TO MOTION FOR**
16 **AN ORDER: (I) ENFORCING**
17 **AGAINST RUNE KRAFT THE**
18 **PLAN AND CONFIRMATION**
19 **CLAIM PRECLUSION BARS TO**
20 **POST-BAR DATE ASSERTION**
21 **OF ADMINISTRATIVE**
22 **EXPENSE CLAIMS; AND (II)**
23 **COMPELLING RUNE KRAFT**
24 **TO DISMISS WITH PREJUDICE**
25 **HIS COMPLAINT**
26 **AGAINST THE REORGANIZED**
27 **DEBTOR IN THE MATTER**
28 **CAPTIONED KRAFT V.**
29 **CHEVRON CORP. ET AL., CASE**
30 **NO. 2:21-CV-00575-DJH (THE**
31 **“ARIZONA-CHEVRON**
32 **LITIGATION”)**

1 **Affidavit of Rune Kraft**

2 I, Rune Kraft, based on personal knowledge, declare:

3 On June 25, 2021, I was contacted by attorneys for W.R. Grace & Co., a Connecticut
corporation ("W.R. Grace"). Since that time, about 20 emails have been exchanged.

4 I informed the attorneys that they could resolve this matter very simply: identify any legal
5 authority that is inconsistent with *In re Daily*, 47 F.3d 365, 368 (9th Cir. 1995), which holds that
6 money obtained by fraud is not dischargeable in an 11 U.S.C. proceeding. This Ninth Circuit
7 standard is also consistent with 11 U.S.C. § 523(a)(2) and (4). The attorneys, since June 25, 2021,
have never provided the requested legal authority.

8 In the action before the U.S. District Court for the District of Arizona, Case No. CV-21-
9 00575-PHX-DJH, W.R. Grace is accused of making false representations in writing and
committing actual fraud for the purpose of obtaining money and property.

10 W.R. Grace & Company, a Connecticut company, is based in Columbia, Maryland. The
11 Defendant has received property it had no lawful rights to receive from a case under title
12 11, which are offenses involving fraud connected with a case under title 11 and "specified
unlawful activity" listed in section 18 U.S.C. § 1961(D).

12 Doc. 1, Complaint, Paragraph 8

13 W.R. Grace is accused of: one act of mail fraud - 18 U.S.C. § 1961(1)(B) Predicate Acts
14 (18 U.S.C. § 1341)(Predicate Act 8), two acts of money laundering 18 U.S.C. § 1961(1)(B)
15 Predicate Acts (18 U.S.C. § 1956(a))(Predicate Acts 37 and 38); one act of monetary transactions
16 in property derived from specified unlawful activity 18 U.S.C. § 1961(1)(B) Predicate Acts (18
U.S.C. § 1957(a))(Predicate Act 74), one act of bank fraud 18 U.S.C. § 1961(1)(B) Predicate Acts
17 (18 U.S.C. § 1344(1))(Predicate Act 93, one act of bank fraud 18 U.S.C. § 1961(1)(B) Predicate
18 Acts (18 U.S.C. § 1344(2))(Predicate Act 107) and taking part in a conspiracy to violate the
Racketeer Influenced and Corrupt Organizations Act. 18 U.S.C. §§ 1961-1968.

19 Neither I nor any assignor of claims to me has been served with any motions and/or orders
related to this action. And neither I nor any assignor of claims to me has taken any part in this
20 action prior to the instant motion.

21 I am competent to testify to the facts set forth in this declaration and declare under the
penalty of perjury of the laws of the United States of America that the foregoing statements are
22 true and correct.

23 DATED this 15th day of July 2021.

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Rune Kraft

The Motion of W.R. Grace & Co. is Frivolous

It is clear from the plain text of the complaint in Case No. CV-21-00575-PHX-DJH that W.R. Grace is accused of making false representations in writing and committing actual fraud for the purpose of obtaining money and property.

Based on *In re Daily*, 47 F.3d 365, 368 (9th Cir. 1995), money obtained by fraud is not dischargeable in an 11 U.S.C. proceeding. This Ninth Circuit standard is also consistent with 11 U.S.C. § 523(a)(2) and (4).

Res Judicata Does Not Apply

The term “*res judicata*” was precisely described by the Supreme Court of the United States in *Taylor v. Sturgell*, 553 U. S. 880 (2008).

The preclusive effect of a judgment is defined by claim preclusion and issue preclusion, which are collectively referred to as “*res judicata*.”⁵ Under the doctrine of claim preclusion, a final judgment forecloses “successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit.” *New Hampshire v. Maine*, 532 U. S. 742, 748 (2001). Issue preclusion, in contrast, bars “successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,” even if the issue recurs in the context of a different claim. *Id.*, at 748–749. By “preclud[ing] parties from contesting matters that they have had a full and fair opportunity to litigate,” these two doctrines protect against “the expense and vexation attending multiple lawsuits, conserv[e] judicial resources, and foste[r] reliance on judicial action by minimizing the possibility of inconsistent decisions.” *Montana v. United States*, 440 U. S. 147, 153–154 (1979).

⁵ These terms have replaced a more confusing lexicon. Claim preclusion describes the rules formerly known as “merger” and “bar,” while issue preclusion encompasses the doctrines once known as “collateral estoppel” and “direct estoppel.” See *Migra v. Warren City School Dist. Bd. of Ed.*, 465 U. S. 75, 77, n. 1 (1984).

Taylor v. Sturgell, 553 U. S. 880 (2008) at 892

Thus, pursuant to the Supreme Court claim preclusion and issue preclusion are to be collectively referred to as “*res judicata*.”

1 This case is based on civil relief under 18 U.S.C. §§ 1961 et seq. which has never been
 2 litigated against W.R. Grace and/or any of the other Defendants in Case No. CV-21-00575-PHX-
 3 DJH. Therefore, “claim preclusion” does not apply.

4 As to “issue preclusion”¹, there are four essential elements to decide if issue preclusion
 5 applies: 1) the former judgment must be valid and final; 2) the same issue is being brought; 3) the
 6 issue is essential to the judgement; 4) the issue was actually litigated. As it relates to Arizona, in
 7 *Chaney Building Co. v. City of Tucson* 148 Ariz. 571, 573 (1986) the Supreme Court of Arizona
 8 explained:

9 Under the doctrine of *res judicata*, a judgment “on the merits” in a prior suit
 10 involving the same parties or their privies bars a second suit based on the same cause
 11 of action. *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 326, 75 S.Ct. 865,
 12 867, 99 L.Ed.2d 1122 (1955); *Industrial Park Corp. v. U.S.I.F. Palo Verde Corp.*, 26 Ariz.App. 204, 206, 547 P.2d 56, 58 (1976). Collateral estoppel or issue
 13 preclusion is applicable when the issue or fact to be litigated was actually litigated
 14 in a previous suit, a final judgment was entered, and the party against whom the
 15 doctrine is to be invoked had a full opportunity to litigate the matter and actually
 16 did litigate it, provided such issue or fact was essential to the prior
 17 judgment. *Industrial Park Corp. v. U.S.I.F. Palo Verde Corp.*, *supra*, 26 Ariz. App.
 18 at 209, 547 P.2d at 61; *Moore Drug Co. v. Schaneman*, 10 Ariz.App. 587, 589, 461
 19 P.2d 95, 97 (1969); Restatement (Second) of Judgments § 27.

20 When an issue is properly raised by the pleadings or otherwise, and is submitted for
 21 determination, and is determined, the issue is actually litigated. Restatement
 22 (Second) of Judgments § 27 comment d. However, in the case of a judgment entered
 23 by confession, consent or default, none of the issues is actually
 24 litigated. *Id.*, comment e. A judgment entered by stipulation is called a consent
 25 judgment, *Cochise Hotels v. Douglas Hotel Operating Co.*, 83 Ariz. 40, 47, 316
 26 P.2d 290, 295 (1957), and may be conclusive, with respect to one or more issues, if
 the parties have entered an agreement manifesting such intention. § 27 comment e.
 Because the issues involved in the Kulseth dispute were never actually litigated, one
 of the prerequisites to giving a judgment collateral estoppel effect is patently absent.
 Nothing is adjudicated between parties to a stipulated dismissal. *See James*,
 "Consent Judgments as Collateral Estoppel," 108 U.Pa.L.Rev. 173, 192 (1959) (a
 consent judgment involves neither a finding nor a concession that either party has
 been negligent or free from negligence).

27 *Chaney Building Co. v. City of Tucson* 148 Ariz. 571, 573 (1986)

28 ¹ The Ninth Circuit recognizes that for issue preclusion, the federal court looks to the law of the
 29 state in which the judgment was entered. *Pike v. Hester*, 891 F.3d 1131, 1138 (9th Cir. 2018).

1 The litigation and related judgment entered in this action did not include Kraft and/or any
2 of his assignors. "Collateral estoppel or issue preclusion is applicable when the issue or fact to be
3 litigated was actually litigated in a previous suit". *Chaney Building Co. v. City of Tucson.*

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5 **Kraft Has at No Point in Any Court Anywhere Engaged in Any
6 Wrongdoings. Such Portrayals Are Trumped Up Slander.**

7 W.R. Grace's attorneys have been alluding to Kraft being vexatious. However, the claims
8 that he has brought against the Defendants in Case No. CV-21-00575-PHX-DJH was never
9 litigated in Case No. CV10-1776 VBF-OP, and derivative cases; and Case No. CV 2017-000765.
10 The Defendants in Case No. CV10-1776 VBF-OP are not parties in, and there are no facts and
11 issues of law that are being litigated in Case No. CV10-1776 VBF-OP and derivative cases, and
12 Case No. CV 2017-000765 that would bar Plaintiff based on claim preclusion and/or issue
13 preclusion from bringing claims against the Defendants in Case No. CV-21-00575-PHX-DJH for
14 violations of the Racketeer Influenced and Corrupt Organizations Act. 18 U.S.C. §§ 1961-1968.
15 *Res judicata*" cannot be applied. *Taylor v. Sturgell*, 553 U. S. 880 (2008) at 892

16 Through their reference to Case No. CV10-1776 VBF-OP and derivative cases W.R.
17 Grace's attorneys have perpetuated malicious portrayals of Kraft. None of this is true, it is all false
18 and fraudulent. Plaintiff has at no point in any court anywhere engaged in any wrongdoings. Such
19 portrayals are trumped up slander. The orders/judgments issued in Case No. CV10-1776 VBF-OP
20 and derivative cases, and Case No. CV 2017-000765 are legal nullities because they were issued
by courts that lacked jurisdiction. And all issues related to Case No. CV10-1776 VBF-OP and
derivative cases, and Case No. CV 2017-000765 are subject to ongoing litigation.

21 Respectfully submitted on this 15th day of July 2021.

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Plaintiff